

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Hudson Valley Television, Inc.)	
v.)	CSR-7028-M
Mid-Hudson Cablevision, Inc.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: September 22, 2006

Released: September 25, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Hudson Valley Television, Inc., licensee of low power television station WSSN-LP, Hudson, Kinderhook, Germantown and Coxsackie, New York ("WSSN-LP"), filed the above-captioned complaint against Mid-Hudson Cablevision, Inc. ("Mid-Hudson"), for its failure to carry WSSN-LP on its cable system serving the communities of Catskill, Hudson and Coxsackie, New York. An opposition to this complaint was filed on behalf of Mid-Hudson to which WSSN-LP replied. For the reasons discussed below, we grant WSSN-LP's request.

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" low power television ("LPTV") stations in certain limited circumstances.¹ An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's rules will be considered "qualified" if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the LPTV station addresses local news and informational needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas ("MSAs") on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.²

¹47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

²47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

III. DISCUSSION

3. In support of its complaint, WSSN-LP argues that it meets all of the requirements set forth in Section 614(h)(2) of the Communications Act of 1934, as amended, and Section 76.55(d) of the Commission's rules and is therefore entitled to carriage on Mid-Hudson's cable system.³ WSSN-LP states that it broadcasts for the required minimum number of hours, meets all the relevant requirements imposed on full-power television stations, broadcasts news and informational programming that is locally oriented and addresses local needs not addressed by full-power stations, complies with the Commission's interference rules, and transmits from a location well within the required 35-miles from the cable system headend.⁴ WSSN-LP points out that the cable communities at issue are all outside of the top 160 MSAs, as determined by OMB on June 30, 1990, and are located in Columbia and Greene Counties, New York, where no full-power television stations are licensed.⁵ WSSN-LP maintains that because Mid-Hudson's system has more than 36 channels, carries broadcast stations on fewer than one-third of its activated channels and does not carry two or more LPTV stations, carriage of its station is required pursuant to Section 76.56(b)(3) of the Commission's rules.⁶

4. WSSN-LP states that it made a proper must carry election on September 25, 2005 and a formal must carry demand on February 24, 2006.⁷ WSSN-LP states that Mid-Hudson rejected the carriage demand, by letter dated March 14, 2006, indicating that WSSN-LP did not meet the signal strength criteria as required by Section 76.55(d) of the Commission's rules.⁸ WSSN-LP argues, however, that the signal strength tests conducted by Mid-Hudson were not conducted in full compliance with the Commission's requirements.⁹ WSSN-LP states that there are three problems with Mid-Hudson's tests: 1) the antenna range and pattern were not submitted; 2) the tests were not spaced over 2 hours (only 1 hour, 48 minutes); and 3) Mid-Hudson did not use the same kind of antenna for WSSN-LP as it uses to receive other broadcast stations at its headend.¹⁰ WSSN-LP states subsequent to Mid-Hudson's signal measurement report, a visit to the cable system's headend indicated that Mid-Hudson used an inappropriately small antenna, approximately 50-60 feet above ground, to measure WSSN-LP's signal.¹¹ Despite bringing a 12-element yagi antenna, Sitgo Model MU48-4-21, to re-test WSSN-LP's signal, station staff were unable to raise the antenna more than 35 feet above ground.¹² As a result, WSSN-LP

³Complaint at 1-2; *see also* 47 U.S.C. § 614(h)(2) and 47 C.F.R. § 76.55(d).

⁴*Id.* at 2. WSSN-LP notes that its transmitter is within 5 miles of Mid-Hudson's headend.

⁵*Id.*

⁶*Id.*, citing 47 C.F.R. § 76.56(b)(3).

⁷*Id.* at Exhibits 1 and 2.

⁸*Id.* at Exhibit 3.

⁹*Id.* at 3, citing *Citrus County Association for Retarded Citizens v. Mickelson Media, Inc. d/b/a Century Cable*, 10 FCC Rcd 960, 961 (1995) ("... signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were done."); *see also* 47 C.F.R. § 76.61(a)(2).

¹⁰*Id.* at 3-4, citing *Vision 3 Broadcasting, Inc. v. Time Warner Cable*, 14 FCC Rcd 15348 (1999); *Larry L. Schrecongost v. TCI of Pennsylvania, Inc.*, 12 FCC Rcd 13194, 13201 (1997) ("[W]hile the Commission does not specify which type of antenna must be used to determine signal strength, a cable operator is required to take measurements with 'generally accepted' equipment that is currently used to receive signals of similar frequency range, type or distance from the principal headend.").

¹¹*Id.* at Exhibit 4.

¹²*Id.*

maintains that no proper test of its signal has yet been conducted.¹³ WSSN-LP argues that, unless and until it submits proper, mutually-conducted, tests to support its assertion of poor signal quality, Mid-Hudson should be directed to commence carriage of WSSN-LP.

5. In opposition, Mid-Hudson argues that WSSN-LP is not a qualified LPTV station entitled to carriage on its system because it does not deliver an adequate over-the-air signal and it has not demonstrated that it airs sufficient local programming.¹⁴ Mid-Hudson states that, because WSSN-LP disputes the signal strength tests referenced in the March 8th letter denying WSSN-LP carriage, it re-tested WSSN-LP's signal using a "professional quality" single channel antenna over a 24-hour period.¹⁵ This test demonstrates that WSSN-LP does not provide a good quality signal to the cable system headend.¹⁶ Mid-Hudson states that, although WSSN-LP complains that its own antenna was not used in conducting the signal tests, the Commission has stated that "[a] low power television station, . . . unlike a full power station, is not authorized to cure a poor quality signal with additional specialized equipment, such as new receive antenna, at the cable headend."¹⁷ Mid-Hudson maintains that, in this instance, the antenna used was entirely appropriate and the measurement was taken at a tower height comparable to that used for other broadcast stations.¹⁸

6. With regard to programming, Mid-Hudson argues that WSSN-LP failed to prove that it consistently broadcasts the types of programming that would "address local news and informational needs which are not being adequately served by full power television stations because of the geographic distance of such full power stations from the low power station's community of license."¹⁹ Mid-Hudson states that WSSN-LP only references 2 shows - "Hudson Values" and "Antiques on the Hudson" - it did not quantify the programming contained therein or show that other full-power stations do not already adequately serve the communities at issue.²⁰ Mid-Hudson states that, in letters dated May 24, and June 5, 2006, it notified WSSN-LP of its concerns regarding its programming and requested more specific information such as programming logs and the number of original episodes.²¹ Mid-Hudson argues that WSSN-LP's responses, however, did not provide the details it requested.²² Mid-Hudson asserts that this failure makes it impossible to determine whether WSSN-LP truly satisfies the local programming requirement for qualified LPTV stations.²³

7. WSSN-LP maintains in reply that Mid-Hudson has still not performed sufficient and

¹³*Id.* at 4.

¹⁴Opposition at 2-3.

¹⁵*Id.* at Exhibit 1.

¹⁶*Id.* at 3.

¹⁷*Id.* at 3 n.8, citing *Tri-State Christian TV, Inc. v. Blytheville TV Cable Company*, DA 06-60 at ¶ 2 (rel. Jan. 13, 2006).

¹⁸*Id.*

¹⁹*Id.* at 4, citing 47 C.F.R. § 76.55(d)(2).

²⁰*Id.*

²¹*Id.* at Exhibits 2 and 4.

²²*Id.* at Exhibits 3 and 5. Mid-Hudson states that WSSN-LP merely supplied a lists of guests on the 2 shows and nothing about the number of original episodes.

²³*Id.* at 6. Mid-Hudson argues that the 10 "local" guests identified by WSSN-LP as appearing over the past 7 months is insufficient to satisfy the local programming requirement. Similarly, if every episode of "Hudson Values" and "Hudson Antiques" is original, it would still amount to a minimal amount of local programming.

proper tests of its signal nor has it, as requested, consented to a joint testing of the signal.²⁴ WSSN-LP states that the tests conducted by Mid-Hudson on June 12 and 13, 2006 have several deficiencies. First, the measurement report indicates that the signal had almost no audio or low audio. WSSN-LP states that this was because it was having transmitter problems during that period and had Mid-Hudson tested on another day, the signal strength level would be in excess of -45 dBm.²⁵ Second, the tests did not strictly conform to the requirements of 6 readings over a 24-hour period with measurements not more than 4 hours apart.²⁶ WSSN-LP states that the first 2 measurements were four hours, eight minutes apart and the 4th and 5th measurements four hours, fifteen minutes apart.²⁷ WSSN-LP argues that both an independent analysis and an informal test taken by WSSN-LP indicate that, given the close proximity between WSSN-LP's transmitter and the cable system headend, a good quality signal can be obtained.²⁸ WSSN-LP maintains that the only proper way to resolve any signal quality issues is to require joint testing to assure that the tests are made at the correct time intervals, with the correct equipment, and at a time when WSSN-LP's transmitter is fully functioning.²⁹ WSSN-LP states that it is not attempting to supply special amplifiers or an alternative delivery technology, but merely attempting to obtain the full cooperation between cable television operators and television stations in conducting signal strength tests that the Commission expects.³⁰

8. WSSN-LP argues further that Mid-Hudson's demand for detailed information about its programming is beyond anything the Commission has ever required or sanctioned in a must carry case.³¹ WSSN-LP states that Mid-Hudson demanded a comprehensive list of every local informational program broadcast since WSSN-LP started operations, with written descriptions or tapes along with a program schedule for the remainder of May and June and a description of each episode of each show.³² WSSN-LP argues that programming aired prior to its must carry complaint is irrelevant.³³ Moreover, WSSN-LP states that it did provide its program grid with a detailed description of its local public affairs programming as requested by Mid-Hudson.³⁴ As a result, WSSN-LP maintains that Mid-Hudson has more than sufficient data to establish that WSSN-LP has, and will continue to, broadcast local information programming and, unlike the cases cited by Mid-Hudson, broadcasts its local informational programs every week.³⁵

²⁴Reply at 1-2.

²⁵*Id.* at Exhibit A.

²⁶*Id.* at 2 n.4, citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, 6736 (1994) ("where initial readings are between -51 dBm and -45 dBm, inclusive, readings must be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results.").

²⁷*Id.* at 3.

²⁸*Id.* at 3 and Exhibits A and B.

²⁹*Id.*

³⁰*Id.* at 4, citing *WMTY, Inc. v. West Alabama Cable Co., Inc.*, 19 FCC Rcd 8172 (2004).

³¹*Id.*

³²*Id.* at 5, citing Opposition at Exhibits 2 and 4.

³³*Id.*

³⁴*Id.*, citing Opposition at Exhibits 3 and 5.

³⁵*Id.* at 6, citing *The Vacation Channel, Inc. v. TCI Cable of the Rockies*, 13 FCC Rcd 12, 13-14 (1997) (weekly interview shows and a regularly-scheduled "Newslines" program are sufficient to meet local programming requirement); *Dan Reynolds v. TCA Cable Partners d/b/a Cox Communications*, 18 FCC Rcd 26693 (2003)

(continued....)

9. There are two main issues in this case. The first is WSSN-LP's argument that Mid-Hudson's did not conduct the re-test of WSSN-LP's signal according to the engineering criteria required by the Commission. The second is Mid-Hudson's allegation that WSSN-LP does not meet the local programming criteria for LPTV stations. We will take them in turn.

10. A review of the second signal strength test performed by Mid-Hudson indicates that the test was, in general, conducted according to sound engineering practice. While WSSN-LP argues that Mid-Hudson strayed from the required 4-hour minimum, we find that the minor variations in the timing of the test are trivial. Several minutes removed from a 4-hour test interval will not affect the signal strength in a meaningful way nor will it affect the accuracy of the test. Moreover, the antenna used during the test appears to be appropriate, the equipment used was recently calibrated, and the cable lengths were reasonable. WSSN-LP has argued, however, that because the test was conducted on a day when its audio was inoperable, the test was not a fair measure of its signal. We agree. Under ordinary circumstances, the lack of audio would have little effect on the overall test results. In this case, however, because WSSN-LP is less than 10 miles from the cable system headend and only barely failed to meet the signal strength criteria, the lack of audio may make a difference in determining the station's actual signal level. As a result, we will require Mid-Hudson and WSSN-LP to conduct a joint test within twenty days of the release date of this order at a time when WSSN-LP's audio is operable. Should this joint re-test indicate that WSSN-LP meets the Commission's signal strength minimums, Mid-Hudson will be required to carry the station.

11. With regard to programming, we do not agree with Mid-Hudson that WSSN-LP fails to meet the programming criteria for LPTV stations. WSSN-LP has provided detailed descriptions of the locally-oriented programs that it broadcasts, as well as a program log of its schedule. Despite Mid-Hudson's contentions, this information is sufficient to determine WSSN-LP's eligibility.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.55(d) and 76.56(b)(3) of the Commission's rules, that the complaint filed by Hudson Valley Television, Inc. **IS GRANTED** to the extent indicated above with respect to the communities of Catskill, Hudson and Coxsackie, New York. Mid-Hudson Cablevision, Inc. **IS ORDERED** to commence carriage of WSSN-LP within sixty (60) days of the date that WSSN-LP provides a good quality signal to the cable system's principal headend.

13. **IT IS FURTHER ORDERED**, that Mid-Hudson and WSSN-LP shall conduct a joint re-test of WSSN-LP's signal within twenty (20) days of the release date of this order. Mid-Hudson and WSSN-LP shall report the results of this joint test to the Commission within ten (10) days of performing the re-test of WSSN-LP's signal.

(...continued from previous page)

(provision of regularly-scheduled local interest program and an announcement bulletin board are sufficient to demand carriage).

14. **IT IS FURTHER ORDERED** that WSSN-LP shall notify Mid-Hudson in writing of its channel position election within thirty (30) days of the date it provides a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.³⁶

15. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁷

FEDERAL COMMUNICATIONS COMMISSION

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³⁶47 C.F.R. §§ 76.57 and 76.64(f).

³⁷47 C.F.R. § 0.283.